

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.**

**Civil Revision Application No.S-104 of 2025**

**Applicant** : Muhammad Umar Shaikh s/o Muhammad Tahir Shaikh **through Mr. Shakeel Ahmed Zai, advocate.**

**Respondent** : Syed Qudrat Ali Shah s/o Syed Rustam Ali Shah **through Mr. Zulqarnain Talpur, advocate.**

**Date of hearing** : **20.08.2025**

**Date of judgment:** **29.08.2025**

**ORDER**

**TASNEEM SULTANA, J.-** Through this revision application the applicant/defendant called in question the order dated 30.07.2025 passed by the learned VIth Additional District Judge, Hyderabad, whereby the applicant /defendant has been conditionally allowed to defend the summary Suit No.74 of 2025 i.e. after deposit of an amount of Rs.16,00,000/- in shape of defence saving certificates.

2. The brief facts leading to the institution of the Suit are that the respondent and applicant are residents of Hyderabad and neighbours by relation. The respondent alleged that in October 2023 the applicant approached him for financial assistance on the pretext that he sustained loss in sandal and footwear business. On 16.10.2023 the respondent advanced a sum of Rs.8,00,000/- in the presence of witnesses, and on the same day it was mutually agreed that this arrangement would be treated as partnership. To this effect the respondent invested a further Rs.8,00,000/- making his initial investment Rs.16,00,000/- which was duly acknowledged by the applicant in writing. It was agreed that profits would be shared on monthly basis i.e. on 5<sup>th</sup> of each calendar month. Subsequently, in December 2023, the respondent advanced another Rs.16,00,000/- to the applicant, thereby bringing his total investment to Rs.3,500,000/-. According to the respondent, despite repeated assurances, the applicant failed to pay any profit till December 2024 to above investment however, an amount of Rs.338,000/-was paid as profit

of investment. Upon persistent demands applicant/defendant issued three cheques No.D83895378 for Rs.250,000/-, No. 83985385 for Rs.800,000/, No.D-83985382 for Rs.50,000/- and No. A-55408683 for Rs.800,000/- aggregating to Rs.1,900,000/- towards repayment of the principal amount. The said cheques when presented were dishonoured with the remarks "insufficient funds" and "payment stopped by drawer." The respondent then lodged FIRs bearing Crime No.56/2025 at P.S. Market and Crime No.31/2025 at P.S. Makki Shah under section 489-F PPC against the applicant. Thereafter, he instituted Summary Suit No.74 of 2025 under Order XXXVII CPC for recovery of Rs.19,00,000/- with markup at 20% per annum.

3. Upon service, the applicant entered appearance and sought unconditional leave to defend the suit. He alleged that in fact the respondent had advanced private loan on heavy interest beginning from 2022, initially Rs.1,00,000/- and later enhanced to Rs.800,000/-, against which exorbitant monthly interest of Rs.59,000/- was being extracted. The applicant asserted that he had already paid Rs.1,450,000/- as interest, and the respondent had forcibly obtained his cheques, ATM card and motorcycle, and had also lodged false FIRs to pressurize him. The applicant further pleaded that he also lodged FIR No.82/2025 at P.S. Market against the respondent for such coercive acts. He also asserted that since the cheques were not issued against any subsisting liability, the suit is false and filed only to harass the applicant. On these grounds, he prayed for unconditional leave under Order XXXVII Rule 3 CPC.

4. The learned trial Court after hearing the parties came to the conclusion that the applicant had not raised a substantial or plausible defence and his pleas were vague and unsupported by documentary evidence. The Court, however, in order not to shut out the defence completely, granted leave subject to deposit of an amount of Rs.1600,000/-(claimed amount) in shape of Defence Saving Certificate.

5. Learned counsel for the applicant contended that the trial Court erred in imposing the condition, as serious factual controversies exist requiring evidence, namely whether the transaction was a genuine partnership or an interest-bearing loan, whether cheques were voluntarily issued or forcibly obtained, and whether repayments had already been made; that in such circumstances unconditional leave is the rule. Learned counsel relied on *Muhammad Zaheer v. Abdul Majeed* (2021 CLC 264) and *Zubair Ahmad v. Shahid Mirza* (2004 SCMR 1747); that where triable issues exist unconditional leave ought to be granted.

6. Learned counsel for the respondent supported the impugned order and submitted that the issuance and dishonour of cheques is admitted by the applicant; that the plea of coercion is a bald assertion without any contemporaneous complaint or supporting document. He further argued that the claim of interest payments is unsubstantiated by any receipt or record, and that the applicant's defence is illusory. Learned counsel placed reliance on case of *Murtaza Haseeb Textile Mills v. Sitara Chemical Industries (2002 SCMR 882)*.

7. Having considered the matter, the pivotal issue before this Court is whether the applicant has raised a plausible defence entitling him to unconditional leave. It is trite that under Order XXXVII CPC the Court must assess the quality of defence. If it is substantial and raises real triable issues, unconditional leave may be granted. If the defence is frivolous or illusory, leave may be refused altogether or granted only on conditions.

8. Rule 3 of Order XXXVII of CPC deals with the case in which a defendant after receipt of summons apply for leave to defend. To appreciate the controversy, it would be appropriate to reproduce the same for the facility of reference:-

**“3. Defendant showing defence on merits to have leave to appear.–** (1) *The Court shall, upon application by the defendant, give leave to appear and to defend the suit, upon affidavits which disclose such facts as would make it incumbent on the holder to prove consideration, or such other facts as the Court may deem sufficient to support the application.*

(2) *Leave to defend may be given unconditionally or subject to such terms as to payment into Court, giving security, framing and recording issues or otherwise as the Court thinks fit.*

*[(3) The provisions of section 5 of the Limitation Act, 1908 (IX of 1908), shall apply to applications under sub-rule (1).]”*

9. Sub Rule 2 of the Rule 3 of the Order *ibid* reveals that leave to defend can be granted unconditionally or subject to such terms as to payment into Court giving security, framing and recording issue or otherwise as the Court would think fit. The principles for grant or refusal of leave to defend the Suit were laid down by the Hon'ble apex Court in the case of *Fine Textile Mills Ltd. Karachi versus Haji Umar (PLD 1963 SC 163)*. The relevant para of the judgment is reproduced as under:-

*“In a suit of this nature where the defendant discloses upon his affidavits facts which may constitute a plausible defense or even show that there is some substantial question of fact or law which needs to be tried or investigated into, then he is entitled to leave to defend. What is more is that even if the defense set up be vague or unsatisfactory or there be a*

*doubt as to its genuineness, leave should not be refused altogether but the defendant should be put on terms either to furnish security, or to deposit the amount claimed in Court.*

*The principles upon which the provisions of Order XXXVII of the Code of Civil Procedure should be applied are not dis-similar to the principles which govern the exercise of the summary power of giving liberty to sign final judgment in a suit filed by a specially endorsed writ of summons under Order XIV of the Rules of the Supreme Court in England. One of such principles laid down by the Court of Appeal in the case of Kodak v. Alpha Film Corporation (1930) 2 K B 340) was that at the stage when leave to defend is sought "the Judge is not to try the action; he is to see that there is a bona fide allegation of a tri able issue, which is not illusory; he need not be satisfied that the defense will succeed; it is enough that such a plausible defense is verified by affidavit."*

The above referred judgment has repeatedly been followed by the Hon'ble Supreme Court in number of cases.

10. It is an admitted fact that the applicant issued cheques to the respondent which were dishonoured. The presumption under the Negotiable Instruments Act is that such instruments are for consideration. The burden lies upon the drawer to rebut the presumption by cogent material. The applicant had not denied his signatures on the cheques. The sole plea of the applicant is that the respondent/plaintiff has taken cheques under coercion, if true, is a serious allegation. Yet no contemporaneous protest, legal notice, or complaint has been placed before this Court to substantiate it. The applicant does refer to FIR No.82/2025 allegedly lodged against the respondent/plaintiff, but the contents of said FIR do not establish that the cheques in question were fabricated or forcibly taken. It is settled law that bald assertions without supporting evidence cannot amount to a plausible defence under Order XXXVII CPC.

11. The plea of usury and payment of Rs.14,50,000/- as interest also lacks evidentiary support. No receipts, acknowledgments, or banking record has been exhibited to show that such payments were in fact made. Even if some payments were made, unless they are shown to have been appropriated against the principal liability, the dishonour of cheques remains unexplained.

12. The judgments cited by the applicant do not assist him. In *Muhammad Zaheer v. Abdul Majeed*, the Lahore High Court held that even where mortgage security exists, a suit based on promissory note remains maintainable under Order XXXVII CPC. That case related to jurisdiction, not to the quality of defence. Far from supporting the

applicant, it in fact affirms that the present suit on the basis of cheques is competent.

13. In *Zubair Ahmad v. Shahid Mirza*, the Hon'ble Supreme Court emphasized that the grant of conditional or unconditional leave depends upon the plausibility of the defence. The Court found that oral assertions of forgery without proof do not amount to a good defence and upheld conditional leave. This precedent, therefore, goes against the applicant rather than in their favour.

14. On the other hand, in supra case of *Murtaza Haseeb Textile Mills v. Sitara Chemical Industries* the Hon'ble Supreme Court has held that when leave is made conditional and the defendant fails to comply, the trial Court has no option but to decree the suit. The conduct of defendants who evade compliance was described as contumacious. This principle is binding upon this Court and leaves no scope to disturb the impugned order.

15. It is well-settled that revisional jurisdiction is not appellate. Unless the order impugned is perverse, arbitrary, or without jurisdiction, this Court will not interfere with the discretion exercised by the trial Court. In the present case, the trial Court weighed the defence and exercised its discretion judiciously by granting leave on condition of deposit of Rs.1,600,000/-. Such order is neither perverse nor illegal.

16. In the present case the applicant's defence is wholly illusory. It is not supported by any contemporaneous record, documentary material, or corroborative evidence. The learned trial Court therefore rightly exercised its discretion in imposing a condition. No illegality, irregularity, or jurisdictional defect is found in the impugned order warranting interference. The order dated 30.07.2025 passed by the learned VIth Additional District Judge, Hyderabad is upheld. Consequently, this revision application fails and is dismissed.

**J U D G E**